



Terry Tamminen
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Division of Water Rights
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Arnold Schwarzenegger
Governor

RE-NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

This public notice was originally issued on March 27, 2004. Due in part to a problem with publication of the notice, it is being re-issued. Interested parties will now be allowed until 60 days following the date of this notice to submit their protests. If you have previously filed a protest on this application, the protest remains active and there is no need to re-file a protest.

APPLICATION: 31350

DATE FILED: August 19, 2002

Notice is hereby given that Nicholas E. Josten has filed an application for a water right permit to divert water from South Fork Pit River tributary to Pit River and West Valley Creek tributary to South Fork Pit River thence Pit River in Modoc County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions are needed in the permit to protect the environment, the public interest, and downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of protests against the application. This notice may be viewed at the Division of Water Rights' (Division) website at www.waterrights.ca.gov. Any correspondence directed to the applicant should be mailed to:

Nicholas E. Josten
2742 Saint Charles Ave.
Idaho Falls, ID 83404

Description of Project

The applicant, Nicholas Josten, has applied for an appropriative water right to provide water for the proposed West Valley A&B Hydroelectric Project. The applicant proposes to utilize the existing diversion and storage facilities of the South Fork Irrigation District (SFID) on South Fork Pit River and at West Valley Reservoir. The project actually consists of two separate hydroelectric projects: the upper project, West Valley A, and the lower project, West Valley B.

The applicant currently does not have an agreement with SFID for use of the facilities. An agreement must be in place prior to issuance of a water right permit for the project. The applicant also requires a U.S. Forest Service Special Use Permit and a U.S. Bureau of Land Management Right-of-Way agreement for access to the point of diversion and the place of use. One of the alternative places of use (Alternative B-2) may also require purchase of property from a private party prior to issuance of a water right permit.

California Environmental Protection Agency

West Valley A Project

The upper project would divert a maximum flow of 100 cubic feet per second (cfs) from the South Fork Pit River through an existing SFID intake structure that is capable of diverting 40 to 50 cfs under existing conditions. The applicant proposes to upgrade both the existing diversion

structure and approximately 11,600 feet of existing open canal that directs the water to West Valley Reservoir. The applicant proposes to construct a concrete overflow structure at the terminus of the existing canal to feed flow into approximately 2,800 feet of new canal. The new canal will end at a screened penstock intake structure. The penstock will be a 400-foot long, 48-inch diameter steel pipe and will deliver the water to the upper powerhouse. Water exiting the powerhouse will enter a 60-inch diameter tailrace pipe that will channel outlet flows directly into the West Valley Reservoir outlet.

The upper project A will be a run-of-river facility and the powerhouse will consist of horizontal shaft Francis reaction turbines and generate 1,100 kilowatts of energy.

West Valley B Project

The lower project will utilize the existing SFID-owned West Valley Dam including the outlet works. The applicant proposes to attach a new bypass valve to the end of the existing dam outlet pipe. The bypass valve will feed up to 150 cfs of water into an elevated 54-inch penstock or in the event that the lower project goes offline, the bypass will direct flows into West Valley Creek.

The applicant currently has two alternative site proposals for the location of the powerhouse for the West Valley B Project. Alternative B-1 would be located near the confluence of West Valley Creek and South Fork Pit River and will require a 2,850-foot long penstock. Alternative B-2 would be located approximately a quarter mile downstream from the West Valley Creek confluence and will require a 4,550-foot long penstock. Return water from either alternative will exit the powerhouse into a tailrace canal and then return to South Fork Pit River.

The lower project B will operate using released, stored water (storage would occur under SFID's right) and directly diverted water. Alternative B-1 will generate up to 1,700 kilowatts of energy and Alternative B-2 will generate up to 2,100 kilowatts of energy. The lower project B will also utilize horizontal shaft Francis reaction turbines.

Federal Energy Regulatory Commission Project Status

The applicant indicates that this project qualifies for an exemption from the Federal Energy Regulatory Commission. Consequently, the SWRCB will accept environmental protests.

Summary of Application

County: Modoc

Source: A) South Fork Pit River tributary to Pit River thence Sacramento River; and
B) West Valley Creek tributary to South Fork Pit River thence Pit River thence Sacramento River

Points of

Diversion: A) Located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T39N, R14E, MDB&M.
B) Located at West Valley Reservoir within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 18, T39N, R14E, MDB&M

Amount: A) 100 cfs of direct diversion
B) 150 cfs of direct diversion

Season: January 1 through December 31

Purpose: Hydropower generation

Place of Use:

Use Within	Section	Township	Range	B & M
NE $\frac{1}{4}$ of NW $\frac{1}{4}$ (West Valley A)	18	39N	14E	MD
NW $\frac{1}{4}$ of SW $\frac{1}{4}$ (Alternative B-1)	7	39N	14E	MD
NW $\frac{1}{4}$ of SE $\frac{1}{4}$ (Alternative B-2)	12	39N	13E	MD

Environmental Information

The lead agency will prepare the appropriate environmental documents for the project according to the California Environmental Quality Act (CEQA) and its guidelines, and will determine whether or not the project will cause a significant effect on the environment. If you are not filing a protest, but wish to submit information that indicates the project may cause a significant effect on the environment, please send this information to Steven Herrera; SWRCB, Division of Water Rights; P.O. Box 2000; Sacramento, CA 95812-2000. This information will be reviewed in accordance with CEQA.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. There must be a clear link between the proposed project and the objection to its approval. If the objection is based on interference with prior water rights, the protest must describe specifically what injury would result if the application is approved. In addition, the party claiming interference with prior rights must provide specific information describing the basis of the prior right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to vested water rights and will include conditions to protect such rights.

If the protest is based on an allegation that the proposed appropriation would not be within the SWRCB's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation.

For example, public interest protests should clearly indicate how the appropriation will affect the public; environmental protests should identify specific impacts and provide supporting recitals on the effect of the proposed project on plants, animals, fish, erosion, pollution, aesthetics, etc.; public trust protests must identify the navigable waters and public trust values that would be affected by the proposed project and how the project will impact public trust values.

All protests should include a description of any measures that could be taken to resolve the protest. The protest also must indicate the manner in which the protestant served upon the applicant a duplicate copy of the protest.

If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

Procedure for Submitting Protests

Protests should be submitted on standard protest forms available from the Division of Water Rights' website at www.waterrights.ca.gov/forms/ or upon request from the Division of Water Rights. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the engineer listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the applicant.**

Protest Submittal Deadline

Protests submitted in response to this notice must be received by the Division by 3:00 p.m. on the 60th day after the date of this notice (the close of the protest period). Protests may be submitted

by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000; Sacramento, CA 95812-2000
2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading "Contact Person"
4. Hand-delivered to the Division office located at 1001 "I" Street, 14th Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division of Water Rights in order for the protest to be accepted. The SWRCB will respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

For good cause, the SWRCB may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as "Contact Person" to request the extension prior to the end of the protest period.

Resolution of Protests

The applicant will have 30 days to respond to a protest once it is accepted by the Division of Water Rights. The protestant and the applicant are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

This is a "major" project (the proposed diversion is greater than 3 cubic feet per second by direct diversion or greater than 200 acre-feet per year by storage) as defined by section 1348 of the Water Code. Therefore, any protest issues not resolved by the applicant or by provisions of section 1335 of the Water Code will be decided by the State Water Resources Control Board following an evidentiary hearing.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Kathryn Gaffney by phone at (916) 341-5360 or by electronic mail at kgaffney@waterrights.swrcb.ca.gov. Information and protest forms are also available at the Division's website: www.waterrights.ca.gov/forms/.

Date of Notice: **July 2, 2004**

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